

REMARKS

Claims 1-24 are pending in the Application. Claims 1, 13 and 24 are independent claims. Claims 2-12 depend from independent claim 1. Claims 14-23 depend from independent claim 13. Claims 13-24 were previously withdrawn from consideration with traverse in response to a restriction/election requirement. Claims 1, 2, 3, 7-8 and 11 were rejected under 35 U.S.C. §103(a) as being obvious over Williams (U.S. Pat. No. 6,190,395) in view of Vilsmeier (U.S. Pub. No. 2003/0078565) and Ferre (U.S. Pat. No. 6,175,756). Claims 4 and 10 were rejected under 35 U.S.C. §103(a) as being obvious over Williams in view of Vilsmeier, Ferre, and Schenk (U.S. Pat. No. 5,895,389). Claims 5 and 6 were rejected under 35 U.S.C. §103(a) as being obvious over Williams in view of Vilsmeier, Ferre, and Haynes (U.S. Pat. No. 2,238,870). Claim 9 was rejected under 35 U.S.C. §103(a) as being obvious over Williams in view of Vilsmeier, Ferre, and Davison (U.S. Pat. No. 4,710,075). Claim 12 was rejected under 35 U.S.C. §103(a) as being obvious over Williams in view of Vilsmeier, Ferre, and Sati (U.S. Pub. No. 2002/005679). The Applicant respectfully requests that the application be reconsidered in view of the foregoing amendments and the following remarks.

Rejections Under 35 U.S.C. §103(a)

On pages 2-5 of the Office Action, independent claim 1 and dependent claims 2, 3, 7-8 and 11 were rejected under 35 U.S.C. §103(a) as being obvious over Williams in view of Vilsmeier and Ferre. The Applicant respectfully traverses the rejection for at least the following reasons.

“To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA

1974)." *See* MPEP at 2143.03 (emphasis added). Further, "[a]ll words in a claim **must** be considered in judging the patentability of that claim against the prior art." *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA)." *See id.* (emphasis added).

The Applicant respectfully submits that the combination of Williams, Vilsmeier, and Ferre fails to teach, suggest, or disclose, for example, "said instrument guide having a handle and carrying a first localizer proximate said instrument, said first localizer being movable relative to said instrument and rotatable with respect to said handle, said handle being rotatable with respect to said first localizer," as recited in independent claim 1.

While Williams may disclose an instrument 32 connected to a tracking head 34, nowhere does Williams teach or suggest an instrument guide having a handle and a first localizer where the localizer is rotatable with respect to the handle and the handle is rotatable with respect to the localizer. Likewise, Vilsmeier and Ferre do not teach or suggest this limitation. Furthermore, Schenk does not teach or suggest this limitation. While Schenk may disclose a drilling guide with a plunger 30 that slides in a sleeve 10 and a handle 24 attached to the sleeve 10, the handle 24 is not rotatable with respect to any other aspect of the drilling guide. Indeed, the Examiner even acknowledges that the "handle (24) [is] secured to the sleeve by two pins (26)." *See* March 16, 2011 Office Action at 6. Therefore, combining Williams with Schenk would not result in an instrument guide wherein the localizer is rotatable with respect to the handle and the handle is rotatable with respect to the localizer. In fact, because the handle 24 of Schenk does not move, combining Williams with Schenk teaches away from the invention of Claim 1.

Therefore, for at least the above stated reasons, Applicant respectfully submits that the combination of Williams, Vilsmeier, Ferre, and Schenck fails to teach, suggest, or disclose

Applicant's invention as set forth in claim 1. The Applicant believes that claim 1 is allowable over these references. Because claims 2-12 depend from claim 1, and all of the rejections of claims 2-12 are based on the combination of Williams, Vilsmeier, and Ferre, Applicant respectfully submits that claims 2-12 are allowable over the these references as well. The Applicant also submits that each of claims 2-12 is independently allowable.

With respect to claims 4 and 10, the combination of Williams, Vilsmeier, Ferre, and Schenk does not teach or suggest

a localizer assembly that is connected to said handle at concentric collars, said collars receiving said instrument along a longitudinal axis, said localizer assembly carrying said first localizer, said collars being rotatable relative to each other such that said first localizer is rotatable about said longitudinal axis relative to said instrument and handle (claim 4)

or

the handle is connected to a first collar and a localizer assembly carrying said first localizer is connected to a second collar, said first and second collars being connected and concentrically aligned and receiving said instrument, said first and second collars being configured to move relative to each other about said instrument (claim 10).

While Williams may disclose a tracking head 34 and Schenk may disclose a handle 24, neither teaches or suggests connecting a localizer assembly and a handle at concentric collars, *i.e.*, collars having a common axis, let alone concentric collars receiving the instrument along a longitudinal axis. Moreover, Schenk teaches away from concentric collars that are rotatable or moveable relative to each other because, as discussed above, the handle 24 of Schenk is not moveable. As such, for this independent reason, claims 4 and 10 are not obvious over Williams, Vilsmeier, Ferre, and Schenk.

With respect to claim 6, the combination of Williams, Vilsmeier, Ferre, and Haynes does not teach or suggest “first and second clamps being adjustably connected to said block and each other and said post being adjustably connected to said first and second clamps.” While Haynes may disclose a base member 3 and brace rods 18 and 19 that each receive a head 8, the brace rods 18 and 19 are not adjustably connected to each other. Indeed, the brace rods 18 and 19 are each mounted to heads 8 attached to separate base members 3. *See* Haynes at Figs. 1-3. As such, for this independent reason, claim 6 is not obvious over Williams, Vilsmeier, Ferre, and Haynes.

With respect to claim 9, the combination of Williams, Vilsmeier, Ferre, and Davison does not teach or suggest that “said fixator includes a post, said post having a shaft with a spring and dowel mechanism thereon, said second localizer receiving said shaft such that said dowel engages said second localizer and said spring is loaded between said second localizer and said post to secure said second localizer to said post.” While the first member 26 of Davison does receive a second member 16 and has a plunger 44 and spring 60, the first member 26 is not a fixator. Furthermore, the alleged “post” or “shaft” 16 disclosed by Davison does not have a spring and/or dowel mechanism thereon. Rather, the plunger 44 and spring 60 are located entirely in the first member 26, which receives the member 16. If the Examiner is arguing that the first member 26 of Davison is the claimed post or shaft, the tracking head 34 of Williams could never receive the first member 26 such that the plunger 44 engages the tracking head 34 or such that the spring 66 is loaded between the tracking head 34 and the first member 26. Indeed, the plunger 44 and spring 26 are located inside of the first member 26 and would not be able to engage the tracking head 34. The proposed combination of Davison and Williams simply would not result in the invention of claim 9.

The Office Action makes various statements regarding claims 1-24, 35 U.S.C. § 103(a), the cited art, one of ordinary skill in the art, *etc.* that are now moot in view of the above amendments and/or arguments. Thus, the Applicant will not address all of such statements at the present time. However, the Applicant expressly reserves the right to challenge such statements in the future should the need arise (*e.g.*, if such statements should become relevant by appearing in a rejection of any current or future claim).

Applicant reserves the right to argue additional reasons supporting the allowability of claims 1-24 should the need arise in the future.

CONCLUSION

Applicant respectfully submits that that all of claims 1-12 are in condition for allowance, and requests that the application be passed to issue.

Should anything remain in order to place the present application in condition for allowance, the Examiner is kindly invited to contact the undersigned at the telephone number listed below.

The Commissioner is hereby authorized to charge any required fees not paid herewith or credit any overpayment to the Deposit Account of GTC, Account No. 070845.

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Respectfully submitted,

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